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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (S) No. 2050 of 2007

Petitioner : Kalicharan Suryawanshi

Versus

Respondents : State of Chhattisgarh & others

Post for order on 27th July, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (S) No. 2050 of 2007

Petitioner		Kalicharan Suryawanshi, S/o Makhanlal Suryawanshi, Aged about 43 years, R/o Birkona, Tahsil & District – Bilaspur (C.G.)
	Versus	
Respondents	1)	State of Chhattisgarh – Through the Secretary, Water Resources Department, D.K.S. Bhavan, Raipur (C.G.)
	2)	The Chief Engineer, Water Resources Department, Hasdeo Kachhar, Bilaspur (C.G.)
	3)	The Executive Engineer, Water Resources Department, Kharang, Bilaspur, (C.G.)
	4)	Inspector General (Confidential) Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri P. R. Patankar, Advocate for the petitioner.
Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents.

ORDER

(Passed on this 27th day of July, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. By this petition filed under Article 226 of the Constitution of India, the petitioner challenges the legality and validity of the order dated 15.1.2007 (Annexure P/5), passed by the Chief Engineer, Water Resources Department, Hasdeo Kachhar, Bilaspur (Respondent No.2), whereby the petitioner was removed from services.

2. The petitioner was appointed as daily wages Labour in Irrigation Department, Kharang Sub Division, Bilaspur. Vide order dated 22.5.2004 (Annexure P/1) passed in Case No. 16/I.D.A./K-111-A/03 (Ref.), on an application field by the Divisional Daily Workcharged Labour Union, the Labour Court directed regularization of the

services of the petitioner along with others, after six months of the date of their joining, with consequential wages and benefits.

3. Pursuant to the said order dated 22.5.2004, passed by the Labour Court, the respondent No.2 by order dated 3.9.2005 (Annexure P/2) regularized the services of the petitioner as unskilled Labour on the pay scale of Rs. 2550 – 3200. On regularization the petitioner was required to fill up attestation form (Annexure P/4). In coloumn No.12 of the attestation form following information was required to be filled up by the petitioner, which reads as under:-

(12) क/ क्या आप कभी गिरफ्तार किए गए हैं, क्या आप पर कभी अभियोग चलाया गया है, क्या आप कभी निरूद्ध किये गये या आपसे मुचलका लिया गया है आप पर जुर्माना किया गया है, क्या आप किसी अपराध के लिए न्यायालय द्वारा दोषी ठहराये गये हैं, पर आपके किसी भी लोक सेवा आयोग द्वारा उसके संचालित परीक्षाओं के किये जाने वाले चयनों में सम्मिलित होने से वर्जित किया गया है, उसके लिए अनह ठहराया गया है या क्या आपको किसी भी परीक्षा में बैठने से वर्जित किया गया है–निष्कासित किया गया है ।

ख/ क्या इस अनुप्रमाणन फार्म को भरते समय किसी भी प्रकार न्यायालय, विश्वविद्यालय या किसी भी शैक्षणिक प्राधिकार संस्था में आपके विरूद्ध कोई मामला लंबित है, यदि (क) अपराध (ख) में पूछे गये प्रश्नों के संबंध में आपके उत्तर हाँ में हों तो आपकी इस अनुप्रमाणन फार्म को भरते समय मामले में गिर0 निरोध जुर्माने दोष सिद्ध तथा दण्डानादेश आदि के पूरे ब्यौरे प्रस्तुत करने चाहिए तथा इस फार्म को भरते समय न्याय0 विश्व0 वि0 शैक्षणिक प्राधिकरण आदि के समक्ष जो मामला लंबित हो उसका स्वरूप बतलाना चाहिए।

4. The petitioner received the removal order dated 15.1.2007 (Annexure P/5) stating therein that the petitioner was not found suitable on the basis of the enquiry report to continue in service.

5. Being aggrieved, the petitioner filed this petition seeking a writ/direction to quash the impugned order dated 15.1.2007 (Annexure P/5) and to grant consequential benefits.

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6. The petitioner in this petition has questioned the legality and validity of the order dated 15.1.2007 on the ground that the alleged crime, registered against one Kalicharan in the year 1999, was not in respect of the petitioner but in respect of another Kalicharan. The petitioner further averred that the petitioner never ever faced any trial nor was arrested or sent to jail. Some other person by same name Kalicharan S/o Makhan Lal was also resident of the same village against whom a criminal case was registered in the year 1999. The service of the petitioner has been terminated without holding proper enquiry.

7. Shri P. R. Patankar, learned counsel appearing for the petitioner submits that the petitioner was never arrested in his life time and no case was registered against him and he has never faced any trial. Therefore, the termination of the petitioner from service on the ground that the petitioner has not submitted correct details of his arrest or criminal case registered against him in column No. 12 of the attestation form is not correct and based on no materials.

8. The respondents in their return submitted that two cases bearing Case No. 10/99 under the provisions of Section 107, 116 (3) of the Indian Penal Code and Crime No. 571/74 under the provisions of Section 147, 457 and 380 of the Indian Penal Code were registered against the petitioner and he was acquitted from the criminal case but the information with regard to the registration of case, trial and acquittal were not submitted in the attestation form. Thus, the petitioner has concealed the relevant facts. The petitioner was liable to be removed from service on account of concealment of the relevant facts as required in the attestation form.

9. The respondents have categorically stated in para 11 of the return that a crime registered in the year 1999 was against other

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Kalicharan, not the petitioner but the crime registered in the year 1974 was against the petitioner. The mistake occurred on account of the fact that the fathers' names of both Kalicharan were one and the same. On query from learned counsel for the respondents, it was pointed out that the petitioner was about 9 – 10 years old in the year 1974, when the case was registered against him.

10. The petitioner in his rejoinder has clearly stated that the petitioner being a minor at that point of time (in the year 1974) was not arrested and he had not faced any trial. The respondents could not produce any document in support of their case that a criminal case was registered in the year 1974 and the petitioner was arrested.

11. Learned counsel appearing for the respondents, per contra, would submit that it is true that the police is not in possession of any of the documents with regard to the registration of the case in the year 1974 and the petitioner was admittedly about 9 – 10 years old at that point of time. However, on enquiry it was fond that a case was registered against the petitioner. The petitioner ought to have given details of the case even if it was of the year 1974, even if, the petitioner was minor at that point of time. Failure to submit details by the respondents, in case of removal of the petitioner from the service, on the ground that the petitioner has concealed the relevant facts, would prejudice the case of the petitioner.

12. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the statement of the respondents that a criminal case was registered in the year 1974 against the petitioner is not supported by any documents. On specific query, the respondents appearing through counsel denied the availability of any records. Even if it is taken to be true, the petitioner was admittedly, 9 – 10 years old at that point

of time. He was a minor, he did not know the pendency of the criminal case as he was never arrested and he never faced a trial being minor and ultimately it resulted into the discharge from the case. The attestation/verification form was filled up on 28.3.2006, after 32 years. Thus it cannot be held that a criminal case was pending against the petitioner.

13. It is a trite law that the object of requiring information in various columns of the attestation form by the candidate is to ascertain and verify the character and antecedents to judge his suitability to continue in service (See **Commissioner of Police, Delhi and another vs. Dhaval Singh**[1], **Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav**[2] and **Secy., Dept. of Home Secy., A.P. and others vs. B. Chinnam Naidu**[3])

14. Applying well settled principles of law to the facts of the present case, it cannot be held that the petitioner was not suitable to work as unskilled Labour in service as he has concealed the material information or submitted false information. Even if the contention of the respondents with regard to the registration of the case in the year 1974 is accepted, it would not materially affect the suitability of the petitioner to the job as the petitioner was minor at that point of time. The petitioner was not arrested and he has never faced any trial, therefore, it could reasonably be expected that the petitioner did not have any information after a period of 32 years and that did not attach much importance to the said fact after a period of 32 years when he filled up the attestation and verification form before joining the service of unskilled Labour on regular basis.

15. In view of the foregoing it can not be held that the petitioner is not suitable to enter into or continue in service as unskilled Labour.

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16. For the reasons stated herein above, the impugned order dated 15.1.2007 (Annexure P/5) is quashed and the respondents No. 1 to 3 are directed to reinstate the petitioner in service forthwith. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

(1999) 1 SCC 246[1]
2003) 3 SCC 437[2]
(2005) 2 SCC 746[3]

Thakur